



**6351-01-P**

## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Part 42**

### **RIN 3038-AB90**

### **Updates to Cross-References to Bank Secrecy Act Regulations**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission”) is adopting technical amendments to the Commission’s regulations that correct cross-references to regulations administered by the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of Treasury, under the Bank Secrecy Act (“BSA”). FinCEN’s regulations have been reorganized and transferred to a new chapter in the Code of Federal Regulations. The amendments update the cross-references to FinCEN regulations and are to be made effective upon publication of this rulemaking.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Helene D. Schroeder, Special Counsel, (202) 418-5424, [hschroeder@cftc.gov](mailto:hschroeder@cftc.gov), Commodity Futures Trading Commission, Division of Swap Dealer and Intermediary Oversight, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington DC 2058.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The BSA<sup>1</sup> authorizes the Secretary of the Treasury (the “Secretary”) to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.<sup>2</sup> The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>3</sup>

Section 5318(h) of the BSA requires “financial institutions” to establish anti-money laundering (“AML”) programs and specifies that these programs must contain certain minimum requirements.<sup>4</sup> Section 1010.100 of FinCEN’s regulations defines futures commission merchants (“FCMs”) and introducing brokers (“IBs”) as financial institutions.<sup>5</sup> As such, FCMs and IBs are required to establish AML programs under section 5318(h) of the BSA. FinCEN regulations also require FCMs and IBs to establish customer identification programs,<sup>6</sup> establish special due diligence programs for certain foreign accounts,<sup>7</sup> detect and report suspicious activity on suspicious activity reports,<sup>8</sup> and file currency transaction reports on certain cash transactions,<sup>9</sup> among other obligations. Section 42.2 of the Commissions regulations implements the authority FinCEN delegated to the Commission to examine FCMs and IBs and ensure that they comply

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<sup>1</sup> The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5314; 5316–5332.

<sup>2</sup> 31 U.S.C. 5311.

<sup>3</sup> See Treasury Order 180–01 (Sept. 26, 2002).

<sup>4</sup> Section 5318(h)(1) identifies these minimum requirements as follows: In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs.

<sup>5</sup> 31 CFR 1010.100(t)(8) and (9).

<sup>6</sup> 31 CFR 1026.220.

<sup>7</sup> 31 CFR 1026.610 and 1026.620.

<sup>8</sup> 31 CFR 1026.320.

<sup>9</sup> 31 CFR 1026.300.

with the BSA regulations to which they are subject,<sup>10</sup> and specifically requires every FCM and IB to comply with the applicable provisions of the BSA, the FinCEN regulations promulgated thereunder, the requirements of 31 U.S.C. 5318(l) and 31 CFR 103.123, which require that a customer identification program be adopted as part of the firm's BSA compliance program.<sup>11</sup>

## **II. Amending § 42.2 of the Commission's Regulations**

Until March 1, 2011, FinCEN regulations implementing the BSA appeared at 31 CFR part 103. Section 42.2 of the Commission's regulations currently references these part 103 regulations. Effective March 1, 2011, FinCEN's regulations were re-organized, re-numbered and transferred to a new chapter, chapter X, within title 31. The re-numbered and re-organized regulations appear within parts 1000 through 1099 of chapter X and are now generally organized by financial industry. Thus, part 1026 of chapter X, for example, sets forth the regulations applicable to FCMs and IBs. Based on the reorganization and transfer of FinCEN regulations, the Commission is adopting technical amendments to part 42 of its regulations to replace outdated references to part 103 with the appropriate references to chapter X.

## **III. Related Matters**

### **A. Administrative Procedure Act**

Notice of proposed rulemaking is not required under section 553(b)(3)(B) of the Administrative Procedure Act ("APA") when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>12</sup>

The amendments described herein are technical changes that are required to correct inaccurate

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<sup>10</sup> See 31 U.S.C. 5318(a)(1) (permitting the Secretary of the Treasury to delegate BSA duties and powers to an appropriate supervising agency) and 31 CFR 1010.810(b)(9) (delegating BSA examination authority to the Commission).

<sup>11</sup> 17 CFR 42.2.

<sup>12</sup> 5 U.S.C. 553(b)(3)(B).

cross- references in the relevant regulation and will not impose any new substantive regulatory requirements on any person. For these reasons, the Commission finds that it is unnecessary to publish notice of these amendments under section 553(b)(3)(B) of the APA.

The Commission also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.<sup>13</sup> The technical amendments update inaccurate cross references. Accordingly, the amendments will be effective on the date of publication of this action, [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

#### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”) requires the Commission to consider whether a rule it proposes will have a significant economic impact on a substantial number of small entities and either provide a regulatory flexibility analysis respecting the significant impact or certify that the rule will not have such an impact.<sup>14</sup> The RFA is applicable only to a rule for which the Commission publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>15</sup> The Commission has determined that it is unnecessary to publish a general notice of proposed rulemaking for the amendments to part 42 of the Commission regulations that are being adopted by this notice, as the amendments are only technical in nature and do not subject any party to any new substantive regulatory requirements. Therefore, neither a regulatory flexibility analysis nor a certification is required for this rulemaking action.

#### C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it is approved by the Office of Management and Budget as

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<sup>13</sup> 5 U.S.C. 553(d)(3).

<sup>14</sup> 5 U.S.C. 601 et seq.

<sup>15</sup> 5 U.S.C. 601(2).

required by the Paperwork Reduction Act.<sup>16</sup> This final rulemaking will not impose any new recordkeeping or information collection requirements, or other collections of information.

#### D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act (“CEA”)<sup>17</sup> requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) specifies that the costs and benefits shall be considered against five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may give greater weight to one or more of the five enumerated considerations to determine, in its discretion, that a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

This final rule does not impose any substantive regulatory obligations on any person. Rather, the Commission solely is adopting technical amendments to § 42.2 of its regulations to ensure that its regulations implementing its BSA examination authority accurately refer to the BSA regulations administered by FinCEN. Accordingly, there are no quantifiable costs associated with this rulemaking. The sole qualitative benefit associated with this rulemaking is accuracy.

#### **List of Subjects in 17 CFR Part 42**

Anti-money laundering, Brokers, Reporting and recordkeeping requirements, Terrorist financing.

#### **Authority and Issuance**

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<sup>16</sup> 44 U.S.C. 3501 et seq.

<sup>17</sup> 7 U.S.C. 19(a).

For the reasons stated in the preamble, the Commodity Futures Trading Commission is amending part 42 of title 17 of the Code of Federal Regulations as set forth below:

**PART 42—ANTI-MONEY LAUNDERING, TERRORIST FINANCING**

1. The authority citation for part 42 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6b, 6d, 6f, 6g, 7, 7a, 7a-1, 7a-2, 7b, 7b-1, 7b-2, 9, 12, 12a, 12c, 13a, 13a-1, 13c, 16 and 21; 12 U.S.C. 1786(q), 1818, 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, secs. 312-314, 319, 321, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Section 42.2 is revised to read as follows:

§ 42.2 Compliance with Bank Secrecy Act.

Every futures commission merchant and introducing broker shall comply with the applicable provisions of the Bank Secrecy Act and the regulations promulgated by the Department of the Treasury under that Act at 31 CFR chapter X, and with the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Commission and the Department of the Treasury at 31 CFR 1026.220, which require that a customer identification program be adopted as part of the firm's Bank Secrecy Act compliance program.

Issued in Washington, DC, on January 8, 2014, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission

Appendix to Technical Amendments Updating Cross-References to Bank Secrecy Act  
Regulations

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1 – Commission Voting Summary

On this matter, Acting Chairman Wetjen and Commissioners Chilton and O'Malia voted  
in the affirmative.

[FR Doc. 2014-00406 Filed 01/13/2014 at 8:45 am; Publication Date: 01/14/2014]